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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re N.R., a Person Coming
Under the Juvenile Court Law.

B301284
(Los Angeles County
Super. Ct. No.
18CCJP06872)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Mary E. Kelly Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel for Plaintiff and Respondent.

Appellant Taylor R. (T.R) is the former boyfriend of K.P. (mother), whose son is N.R. In dependency proceedings held pursuant to Welfare and Institutions Code section 300, the juvenile court designated T.R. as N.R.'s alleged father. T.R. subsequently requested to be designated N.R.'s presumed father under Family Code section 7611, subdivision (d).¹ The court denied his request. T.R. appeals from the denial of his request. He argues the court erred in failing to conduct a proper paternity inquiry, and he qualified for presumed father status within the meaning of section 7611, subdivision (d).

We conclude T.R. has forfeited his appellate claims regarding the juvenile court's alleged failure to conduct a proper paternity inquiry, and in any event, the purported errors are harmless. T.R. did not meet his burden of showing by a preponderance of the evidence that he satisfied the presumption of section 7611, subdivision (d). We therefore affirm the court's denial of T.R.'s request for presumed father status.

BACKGROUND

We summarize the factual and procedural background relevant to the issues on appeal.

Then eight-year-old N.R. came to the attention of the Department of Children and Family Services, (the Department) on September 10, 2018, after a domestic violence incident between T.R and mother in N.R.'s presence based on T.R.'s drug use. Mother was pregnant with their second child at the time. N.R. was later placed in protective custody.

¹ Statutory references are to the Family Code, unless otherwise indicated.

According to mother, she and T.R. had been dating for eight years when N.R. was born. T.R. was not involved in mother's prenatal care nor was he present at N.R.'s birth. His visits with N.R. were infrequent, and the child never stayed overnight in T.R.'s home. Once, on N.R.'s birthday, T.R. brought him supplies. According to T.R., mother refused his multiple requests to visit N.R. She would only allow him to see N.R. sporadically. In November 2017, T.R. moved in with mother and N.R. following his release from prison. In the nine months leading up to the domestic violence incident, T.R. reported to his probation officer, went to work regularly, agreed to pay half the monthly rent, and spent quality time with mother and N.R. as a family.

Immediately after the incident, T.R. left the home. In early October 2018, mother obtained a temporary restraining order against him and requested a Domestic Violence Restraining order. Mother stated she filed a child support case on "11/2/2010." No child support order existed, but she wanted one.

The Department filed a juvenile dependency petition alleging parents failed to protect N.R. from domestic violence and T.R.'s substance abuse. (Welf. & Inst. Code § 300, subds. (a) & (b).)

At the detention hearing, the juvenile court declared T.R. an alleged father based on mother's statements and her responses to her Parentage Questionnaire. Mother identified T.R. as N.R.'s biological father, but stated they were not married and that T.R. had not signed N.R.'s birth certificate. Mother stated T.R. held himself out openly as N.R.'s father but had not received N.R. into his home, nor had he helped support N.R. by paying rent, buying necessities, or by having a relationship with him. Mother stated T.R.'s paternity of N.R. was declared by the Child

Support Division and in Family Court. T.R. arrived at the courthouse on the day of the hearing, but left before it began. He was not present at the hearing or represented by counsel. The court ordered him to be cited to appear at the next hearing.

A November 2018 report prepared for the jurisdiction and disposition hearing included T.R.'s statements to the Department social worker. T.R. stated he had not yet visited N.R. but wanted to schedule visitations and to cooperate fully with the Department "to regain custody of [N.R.]."

The juvenile court reissued the restraining order against T.R. on November 13, 2018. On December 3, 2018, the court issued a three-year restraining order to keep T.R. away from mother.

T.R. received notice of the December 17, 2018 jurisdiction and disposition hearing, but did not attend. He was not represented by counsel. The social worker reported T.R. had not contacted N.R.'s caregivers or N.R. The juvenile court sustained the dependency petition as to both parents, declared N.R. a dependent of the court, ordered reunification services for both parents, unmonitored visits for Mother, and monitored visits for T.R.² T.R. was ordered to participate in domestic violence and substance abuse programs and to submit to random drug testing.

T.R. was not present for the July 2, 2019 six-month review hearing. He had not contacted the Department or visited N.R.

² Mother appealed, and we affirmed the juvenile court's exercise of dependency jurisdiction. (*L.A. Cty. Dep't of Children & Family Servs. v. K.P. (In re N.R.)* (Oct. 17, 2019, B294772 [nonpub. opn.])).

The juvenile court ordered N.R. returned to Mother and scheduled a three-month review hearing.

In a report prepared for the review hearing, the social worker stated T.R. was arrested on February 1, 2019, released on April 26, 2019, then rearrested on August 1, 2019. He was serving a 160-day sentence in county jail. The report further stated T.R. had not enrolled in any court-ordered programs nor had he contacted N.R.

On October 1, 2019, the juvenile court took up the issue of T.R.'s paternity status. He appeared in custody, represented by appointed counsel³ and completed a Statement Regarding Parentage (form JV-505) stating: He believed he was N.R.'s father, he had told unspecified friends and family members N.R. was his child, and N.R. had lived with him from "2-18 to 1-19." T.R. asked the court to enter a judgment of parentage.

T.R. did not testify at the hearing. All counsel agreed T.R. had lived with N.R. for nine months when N.R. was eight years old. T.R.'s counsel argued T.R. had satisfied the requirements for presumed father status under section 7611, subdivision (d) by receiving N.R. into his home and holding the child out as his own.

The juvenile court, a different bench officer than at the detention hearing, denied T.R.'s request, awarded custody to mother and terminated jurisdiction. The court explained it declined to find T.R.'s "living with the child for nine months when the child [was eight years old] warrants or [rises] to the level of openly receiving the child in his home [and] holding him out as

³ T.R. was appointed counsel from one of the law firms operating under the auspices of the Los Angeles Dependency Lawyers, Inc.

his natural child” under section 7611, subdivision (d). The court also noted T.R. “has not been to court.” The court found T.R. an alleged father. T.R. timely appealed.

DISCUSSION

“There are three types of fathers in juvenile dependency law: presumed, biological, and alleged. [Citation.] A presumed father is a man who meets one or more specified criteria in section 7611. A biological father is a man whose paternity has been established, but who has not shown he is the child’s presumed father. An alleged father . . . is a man who has not established biological paternity or presumed father status. [Citation.]” (*In re P.A.* (2011) 198 Cal.App.4th 974, 979; accord, *In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120.) “A fourth category, a ‘de facto’ father, is also recognized in dependency proceedings . . .” (*In re D.P.* (2015) 240 Cal.App.4th 689, 695, fn. 4.)

A. Forfeiture

Before arguing the juvenile court erred in denying him presumed father status under section 7611, subdivision (d), T.R. asserts the juvenile court’s failure to conduct a proper paternity inquiry pursuant to Welfare and Institutions Code section 316.2 (section 316.2) and California Rules of Court, rule 5.635 (rule 5.635) “resulted in the erroneous finding” he was the alleged rather than the presumed father of N.R.

As pertinent here, the paternity inquiry of section 316.2 requires the juvenile court to ascertain, at the detention hearing or as soon thereafter as practicable, “whether a judgment of paternity already exists.” (Welf. & Inst. Code § 316.2, subd. (a)(1).) That means, under rule 5.635, the court must first ask the

parties whether another court has made a judgment of paternity. (Cal. Rules of Court, rule 5.635(b)(1).) The court must then ask the local child support agency whether it can provide proof of that judgment. (Cal. Rules of Court, rule 5.635(d)(1)-(3)). If such proof is provided, the court must take judicial notice of the prior paternity judgment. (Cal. Rules of Court, rule 5.635(d)(4)). T.R. maintains the court wrongly deprived him of presumed father status by failing to ask the child support agency for proof of a paternity finding in mother's 2010 child support case at both the detention and final review hearings.

A party is generally precluded from raising issues on appeal that are not first raised in the juvenile court. "In dependency litigation, nonjurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal." (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.)

T.R. did not appear at the detention hearing. When he did appear at the final review hearing and was represented by counsel, neither T.R. nor his counsel raised the issue of a prior paternity determination. Specifically, no objection was made when the juvenile court did not indicate it would inquire of the child support agency whether a prior paternity judgment existed. Nor did T.R.'s counsel argue T.R. would have qualified as a presumed father but for the lack of an inquiry pursuant to rule 5.635 (d)(1) through (3). To the contrary, counsel relied only on section 7611, subdivision (d) in arguing T.R. qualified for

presumed father status. T.R. has thus forfeited on appeal his argument concerning a rule 5.635 inquiry.⁴

Further, a prior judgment of paternity did not entitle T.R. to presumed father status. It meant only he is the biological father of N.R. (*In re E.O.* (2010) 182 Cal.App.4th 722, 727 [“A paternity judgment is, as the name implies, a judicial determination that a parent-child relationship exists. It is designed primarily to settle questions of biology and provides the foundation for an order that the father provide financial support.”].) Because biology is not determinative of presumed paternity, T.R. was still obligated to establish his status as the presumed father in the juvenile court. (*Id.* at p. 728; *In re Cheyenne B.* (2012) 203 Cal.App.4th 1361, 1377-1378 [a biological father must meet the requirements of section 7611 to attain presumptive father status].) Consequently, here, even if the court erred by not inquiring about a prior paternity judgment, the error was harmless.

B. Presumed Father Status

“A presumed father is ‘one who “promptly comes forward and demonstrates a full commitment to his paternal responsibilities—emotional, financial, and otherwise. . . .”’ [Citation.]’ (*In re E.O.*, *supra*, 182 Cal.App.4th at p. 726.) To qualify as a presumed father, T.R. must fall within one of the presumptions of section 7611. (*Id.* at pp. 726-727) A section 7611

⁴ We agree with respondent Department that T.R.’s argument is disingenuous. If a prior judgment of paternity exists, T.R. likely would have referenced it in this appeal to demonstrate the juvenile court’s error.

presumption is a “rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.” (§ 7612, subd. (a).) Subdivision (d) of section 7611 creates a rebuttable presumption of presumed father status if “[t]he presumed parent receives the child into his or her home and openly holds out the child as their natural child.”

We apply a substantial evidence standard to our review of the juvenile court’s finding presumed father status was not met within the meaning of section 7611, subdivision (d). (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1653.) That is, “we review the facts most favorably to the judgment, drawing all reasonable inferences and resolving all conflicts in favor of the order. [Citation.] We do not reweigh the evidence but instead examine the whole record to determine whether a reasonable trier of fact could have found” as decided. (*Id.* at p. 1650.)

The juvenile court rejected T.R.’s claim of presumed father status, reasoning he had not established the presumption of section 7611, subdivision (d). We agree. “In determining whether a man has ‘receiv[ed a] child into his home and openly h[eld] out the child’ as his own (§ 7611, subd. (d)), courts have looked to such factors as whether the man actively helped the mother in prenatal care; whether he paid pregnancy and birth expenses commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for the child after it no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the

requisite paperwork; and whether his care was merely incidental. [Citations.]” (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1211.)

T.R. and mother were never married and were not living together when N.R. was conceived. T.R. did not help mother with prenatal care, was not present for N.R.’s birth and did not place his name on the child’s birth certificate. T.R. offered no evidence he signed a voluntary declaration of paternity or undertook legal action to obtain custody of N.R. The only relationship T.R. maintained after N.R. was born was moving in with mother for nine months when N.R. was eight years old. While it was mother’s home, T.R. resided there and paid half the rent, which made the home his. (*In re Alexander P.* (2016) 4 Cal.App.5th 475, 495 [“One’s ‘home’ is the place where one resides. The evidence is clear that [father] has received the minor into his home, albeit a home that may be owned or rented by Mother.”] fn omitted.) Although mother stated T.R. held himself out openly as N.R.’s father, T.R. did not present evidence of the “friends and family members” he supposedly told about his son. Nor, after leaving home, did T.R. attempt to maintain any relationship with N.R. or support him financially. ““Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring.” [Citation.]’ [Citation.]” (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 160.)

Moreover, despite having received sufficient notice, T.R. failed to appear at any dependency proceedings until the final review hearing. The date of that hearing was more than one year after T.R. had left home in September 2018. It was also the first time he sought presumed father status. In November 2018, T.R. told the Department social worker he wanted to visit N.R. and

would cooperate fully with the court and the Department. However, he never contacted the social worker, N.R.'s caregivers or N.R. to reunify with his child. Nor did T.R. participate in in any court-ordered reunification services. "The law does not require children to wait so long for parents to become sufficiently interested. . . ." (*In re Marcos G.* (2010) 182 Cal.App.4th 369, 391.)

Based on this record, the juvenile court did not err in denying T.R.'s request for presumed father status. Substantial evidence supports the court's finding he failed to establish the section 7611, subdivision (d) presumption. Ultimately, the question is whether T.R. demonstrated " . . . a full commitment to his paternal responsibilities—emotional, financial, and otherwise. . . ." [Citation.]” (*In re E.O.*, *supra*, 182 Cal.App.4th at p. 726.) Clearly, T.R. has shown little or no interest in N.R.'s well-being.

T.R.'s reliance on our decision in *In re J.O.* (2009) 178 Cal.App.4th 139 is misplaced. In that case, a different panel of this court concluded a presumed father's failure to keep in contact with and support his family, did not rebut the established presumption of section 7611, subdivision (d). (*Id.* at p. 151.) Unlike T.R., the father had satisfied the presumption to the juvenile court's satisfaction because, although he and the mother were never married, they lived together when the children were born, his name was on their birth certificates, he accepted the children into his home, held himself out as their father and supported them for several years. (*Id.* at p. 149.) In contrast, T.R. did not meet his burden of showing by a preponderance of the evidence he satisfied the presumption of section 7611, subdivision (d).

DISPOSITION

The order denying T.R. presumed father status is affirmed.

CURREY, J.

We concur:

MANELLA, P.J.

WILLHITE, J.